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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 482.

THE UNITED STATES OF AMERICA *EX REL.* MILWAUKEE SOCIAL DEMOCRATIC PUBLISHING COMPANY, PLAINTIFF IN ERROR,

vs.

ALBERT S. BURLESON, POSTMASTER GENERAL OF THE UNITED STATES.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 3164.

THE UNITED STATES OF AMERICA ex Rel. MILWAUKEE SOCIAL DEMOCRATIC PUBLISHING CO., Appellant,

vs.

ALBERT S. BURLESON, Postmaster General of the United States.

a Supreme Court of the District of Columbia.

At Law. No. 60784.

THE UNITED STATES OF AMERICA ex Rel. MILWAUKEE SOCIAL DEMOCRATIC PUBLISHING COMPANY, Relator (Plaintiff),

vs.

ALBERT S. BURLESON, Postmaster-General of the United States, Respondent (Defendant).

THE UNITED STATES OF AMERICA,
District of Columbia, ss:

Be It Remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:

1 *Petition for Mandamus.*

Filed November 5, 1917.

In the Supreme Court of the District of Columbia.

At Law. No. 60784.

THE UNITED STATES OF AMERICA ex Rel. MILWAUKEE SOCIAL DEMOCRATIC PUBLISHING COMPANY, Relator,

vs.

ALBERT S. BURLESON, Postmaster General of the United States, Respondent.

The petition of the Milwaukee Social Democratic Publishing Company, by its President, E. H. Thomas, respectfully alleges and shows unto this Honorable Court:

That said Milwaukee Social Democratic Publishing Company is, and has been for many years last past a corporation duly organized under the laws of the State of Wisconsin, with its principal office located at Milwaukee, Wisconsin. That it has for many years last past published a daily newspaper known as the Milwaukee Leader. That the stockholders and bondholders of said corporation number Twelve thousand (12,000) more or less, consisting principally of the members of the Social Democratic party. That the directors of said corporation have duly empowered and designated E. H. Thomas to act for and in behalf of said corporation in all matters pertaining to the above entitled proceeding.

Your petitioner further says that there is invested in the securities and property of the Milwaukee Social Democratic Publishing Company about Four Hundred Thousand ($400,000) Dollars. That it has a daily circulation of Forty thousand (40,000) more or less, as appears in its sworn report to the Government, and that
2 it circulates throughout the United States. That it has complied in every respect to the laws of the Government of the United States which entitles it to the use of the post offices and post roads of the United States as second-class mail matter, and that for many years last past it was received and circulated in the mails of the United States as second-class mail matter. That the income of said paper is vitally dependent upon the privilege of using said mails, not only in the matter of income secured from subscribers to said paper, but in the income secured from advertisers, the procuring of which advertisers is dependent upon the continued right and privilege to use said mails. That the present organization and business of said newspaper is the result of years of organization and enterprise.

That on the 15th day of June, 1917, there was enacted a law of the United States commonly denominated the Espionage Law; and that on the 13th day of September, 1917, there was received through the mail from the Post Office Department of the United States a letter dated September 11th, 1917, an exact — of which is here set forth, as follows:

WASHINGTON, September 11, 1917.

141179

Publisher, "The Milwaukee Leader," Milwaukee, Wisconsin.

SIR: You are hereby notified that, in accordance with the Act of Congress approved March 3, 1901 (ch. 851, 31 Stat. L. 1907), you will be granted a hearing at the office of the Third Assistant Postmaster General, Washington, D. C., at 2:00 P. M., on Saturday, September 22, 1917, to show cause why the authorization of admission of "The Milwaukee Leader" to the second class mail
3 matter under the Act of March 3, 1879, (ch. 180, sec. 14, 1 Supp., 246), should not be revoked, upon the following ground:

The publication is not a "newspaper or other periodical publication" within the meaning of the law governing mailable matter

of the second class, it being in conflict with the provisions of the law embodied in section 481½, Postal laws and Regulations.

Your appearance at the hearing may be in person or by representative. In any event, your answer must be in writing. It should be submitted on or before September 22, 1917, and will be given the same consideration as though you appeared in person or by representative.

Respectfully,

A. M. DOCKERY,
Third Assistant Postmaster General.

Registered 3585.

That there was contained in said same mail enclosure a printed slip, a copy of which is here set forth, as follows:

Order of the Postmaster General.

OFFICE OF THE POSTMASTER GENERAL,
WASHINGTON, June 16, 1917.

Order No. 431.

The Postal Laws and Regulations of 1913 is hereby amended by the addition of the following as section 481½.

1. Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, of any kind, in violation of any of the provisions of this act (Act of June 15, 1917, Espionage Bill), is hereby declared to be non-mailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier: Provided, That nothing in this act shall be so construed as to authorize any person other than an employee of the Dead Letter Office, duly authorized thereto, or other person upon a search warrant authorized by law, to open any letter not addressed to himself. (Act of June 15, 1917, Sec. 1, Title XII.)

2. Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, of any kind, containing any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States, is hereby declared to be non-mailable. (Act of June 15, 1917, Sec. 2, Title XII.)

4 3. Paragraph 1 above relates to mail matter of any class which is in violation of any of the provisions of the Act of June 15, 1917, known as the Espionage Bill, and applied specifically to all matter which is intended to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies, or which is intended to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or which is intended to obstruct the recruiting or enlistment service of the United States. (Act of June 15, 1917, Sec. 3, Title I.)

4. Whoever shall use or attempt to use the mails or Postal Service of the United States for the transmission of any matter declared by this title (Title XII, Act of June 15, 1917, Espionage Bill) to be non-mailable, shall be fined not more than $5,000 or imprisoned not more than five years, or both. Any person violating any provision of this title may be tried and punished either in the district in which the unlawful matter or publication was mailed, or to which it was carried by mail for delivery according to the direction thereon, or in which it was caused to be delivered by mail to the person to whom it was addressed. (Act of June 15, 1917, Sec. 3, Title XII.)

5. The postmaster shall not give opinions to the public, and when in doubt as to the mailability of any matter under the above statute he shall withhold the same from dispatch or delivery, as the case may be, and submit the question with samples of the matter to the Solicitor for the Post Office Department for instructions.

A. S. BURLESON,
Postmaster General.

That in response to the citation of said letter petitioner sent its editor, Victor L. Berger, to Washington. That at said time there were present the Third Assistant Postmaster General, Hon. A. M. Dockery, as your petitioner is informed, representing the Postmaster General of the United States. That at said meeting, as petitioner is informed, inquiry was made as to matters concerning the Milwaukee Leader, its ownership and the authenticity of certain articles which had appeared in said paper. That said hearing was of the most informal character, there being no sworn testimony taken, there being no pleadings or issue made, and the Postmaster
5 General of the United States not being present at any time in person. That petitioner is informed that in response to the inquiry to said Third Assistant Postmaster General as to what specific article or what specific offense was charged against said paper to constitute a violation of the Espionage Law above referred to, the reply of the representatives of the Postmaster General was in substance that "the tendency of the paper was seditious."

That shortly thereafter there was issued from the Department of the Postmaster General a letter directed to the Postmaster of the City of Milwaukee, a copy of which is here set forth, and is as follows:

Division of Classification,
Post Office Department,
Third Assistant Postmaster General.

WASHINGTON, October, 1917.
C. D. No. 141179.

Postmaster, Milwaukee, Wis.:

Upon the issuance of a citation to the publisher of "The Milwaukee Leader" to show cause on September 22, 1917, why the author-

ization for admission of that publication to the second class of mail matter should not be revoked, and after a hearing accorded the publisher on that date, the Department, upon consideration of all the facts before it, hereby determines, and you will so inform the publisher, that "The Milwaukee Leader" is not entitled to transmission in the mails at the second class rates of postage because it appears from the evidence in possession of the Department that the publication is not a "newspaper or other periodical publication" within the meaning of the law governing mailable matter of the second class, it being in conflict with the provisions of the law embodied in section 481½, Postal Laws and Regulations.

Therefore, the authorization heretofore issued for the acceptance of "The Milwaukee Leader" for mailing at the second class rates of postage is hereby revoked, and you are requested to enter that fact upon the records of your post office.

(Signed) A. M. DOCKERY,
S. A. M.-r. w. *Third Assistant Postmaster General.*

6 That on October 3rd, 1917, there was received by the Milwaukee Leader a letter, a copy of which is here set forth, and is as follows:

OCT. 3, 1917.

The Milwaukee Leader, 6th and Chestnut Sts., Milwaukee, Wis.

GENTLEMEN: I am in receipt of a letter from the Third Assistant Postmaster General stating:

"That 'The Milwaukee Leader' is not entitled to transmission in the mails at the second class rates of postage because it appears from the evidence in possession of the Department that the publication is not a 'newspaper or other periodical publication' within the meaning of the law governing mailable matter of the second class, it being in conflict with the provisions of the law embodied in Section 481½, Postal Laws and Regulations."

Pursuant therefore, the authorization granted you for mailing The Milwaukee Leader at the second class rates of postage is revoked.

A copy of the Department's letter is herewith enclosed.

Very respectfully,

F. B. SCHUTZ,
Postmaster.

That on said same date, October 3rd, 1917, after the receipt of said letter from said Postmaster, the following telegram was sent to the Hon. Albert S. Burleson, Postmaster General:

MILWAUKEE, Wis., Oct. 3, 1917.

Hon. Albert S. Burleson, Postmaster General, Washington, D. C.

I hereby appeal from the decision of the Third Assistant Postmaster General revoking the second class mailing privilege of the

Milwaukee Leader and request you kindly to instruct the
7 Milwaukee postmaster by wire to receive the paper until my appeal has been heard and decided upon by you. Please wire me an answer.

VICTOR BERGER,
Editor Milwaukee Leader.

Paid.

That on said same date there was received from said Postmaster General the following telegram:

WASHINGTON, D. C., Oct. 3-17.

Victor Berger, Editor Milwaukee Leader, Milwaukee, Wis.:

I have reviewed the action of the third assistant postmaster general in revoking the second class privilege of the Milwaukee Leader, and approve same. At the instance of Mr. Brisbane I reexamined carefully the record made in the case and find no reason for rescinding the action taken.

A. S. BURLESON,
Postmaster General.

That in conformance with the orders hereinbefore set forth of the Postmaster General, his assistants and subordinates, the use of the mails was forbidden to the said daily newspaper known as The Milwaukee Leader, edited and published by said Milwaukee Social Democratic Publishing Company, and that at the present time and for an indeterminate time in the future, as petitioner is informed and believes, it will be forbidden the use of and denied all second-class and other mailing privileges; and as a result of said orders of the said Postmaster General the mail circulation of the said The Milwaukee Leader has been made impossible, and that said Milwaukee Social Democratic Publishing Company has been compelled to discontinue mailing its said papers to its mail subscribers. That as a consequence of said action it has been deprived of the daily circulation of approximately Fifteen thousand (15,000) subscribers. That to be deprived of the use of said mailing privileges is destructive of the organization
of and the circulation of the said paper, and in substance and
8 effect destroys the property of the Milwaukee Social Democratic Publishing Company; and that the continued denial of the use of said mailing privileges will do irreparable damage to said paper and to said Company.

That at the hearing before the Postmaster General's Department, as hereinbefore described, its representative at said meeting denied that it had ever committed any act in violation of the Espionage Law, and that petitioner still makes and ever will make such claim; and that at no time since the enactment of the said so-called Espionage Law, or at any time prior thereto, has ever caused to be printed and set forth in the said Milwaukee Leader any article or articles which in any way or manner contain any matter advocating or urg-

ing treason, insurrection, or forcible resistance to any law of the United States.

That the said Milwaukee Leader has for many years last past been the spokesman and so-called organ of the Socialist Party of the City of Milwaukee in the State of Wisconsin, and elsewhere, and the so-called organ of a great number of labor unions and other organizations in said same territory.

That the International Socialists of the world and the Socialist Party of the United States have for many years been the advocates of international peace. That the said Milwaukee Leader has in its columns advocated this principle of peace, but has at no time published articles tending to breach any of the provisions of the said Espionage Law. That there were presented no facts to the Postmaster General's Department, nor has said Department in its possession any facts or any articles or any writings published in said Milwaukee Leader which come within the provisions of the said Espion-
9 age Law.

That the proceedings of the Postmaster General, his assistants and subordinates, and the order of said Postmaster General's Department in reference to the publication printed and issued by petitioner have destroyed the property of said Milwaukee Social Democratic Publishing Company without due process of law, as guaranteed by the Constitution of the United States.

That the provisions of said Espionage Law do not provide for any proceedings by which through due process of law there could be determined whether any of the provisions of said Espionage Law have been violated or not. That the offenses defined in said Espionage Law are each and every of them offenses, the determination of which can only be had after judicial consideration by a competent tribunal. That the provisions of said law giving and authorizing the Postmaster General, his assistants and subordinates, to determine the question of when an offense has been committed in violation of the provisions of said Act are unconstitutional and do not afford to accused a right to trial in a court of competent jurisdiction.

That the action of said Postmaster General hereinbefore referred to has deprived petitioner of the constitutional right to free speech, and has been and is destructive of the rights of a free press, thereby not only doing irreparable injury to petitioner, but to the people of the United States in general.

That the duties of the Postmaster General of the United States, as they concern the right to the use of the mails, under the circumstances in the instant case, are purely of a ministerial nature.
10 That there is reposed in him no judicial power to determine issues of facts, nor can such be found in the text or by implication in said Espionage Law. That the grounds alleged in the Espionage Law upon which a determination could be predicated by the Postmaster General to justify his action in the premises in each instance raises issues of fact, the determination of which issues of facts clearly involved acts destructive of the property of the Milwaukee Social Democratic Publishing Company and of all citizens of the United States. That the Espionage Law thereby seeks to

enact in the law authority for an executive officer of the Government to destroy valuable property rights, if he please, upon his mere whim and caprice, and seeks to clothe an executive officer of the Government with the power necessarily belonging to the judicial branch of the Government. That the enactment of said law attempts an usurpation of the judicial power vested by the Constitution in the judiciary. That petitioner further represents that there is no redress which can be invoked by your petitioner, except by the remedy in the extraordinary writ here sought.

That each of the offenses defined in the law as a ground empowering the Postmaster General to exclude the offender from the mails is a criminal offense punishable under the laws of the United States, and provides thereby complete protection and the agencies of punishment to the Government.

That since the passage of the bill hereinbefore referred to as the Espionage Bill, there has been enacted into law a bill commonly known as the Trading with the Enemy Act, which in part provides as follows:

"And it shall be unlawful for any person, firm, corporation, or association, to transport, carry or otherwise publish or distribute the same, or to transport, carry, or otherwise publish or distribute any matter which is made non-mailable by the provisions of the Act relating to espionage approved June 15, 1917."

11 That the effect of said provision is to not only, as under the circumstances above related, empower the Postmaster General of the United States to exclude matters such as therein described and referred to from the mails, but enables him under the provisions of the act above extended to exclude from circulation by other transportation or means of conveyance, or in fact to exclude from the right of publication any such matter as he has declared to be non-mailable. In fact, the Postmaster General having made an order declaring a certain publication to be non-mailable, brings into operation the provisions of the Trading with the Enemy Act, and makes a criminal offense of the publication or delivery by any other means, without any further act or order being issued by him.

That under and by virtue of the provisions of said Trading with the Enemy Act, the Milwaukee Social Democratic Publishing Company is absolutely prohibited from continuing the publication of said Milwaukee Leader or the distribution of the same, and is therefore deprived of the use of its entire property and investment, and is caused to sustain irreparable money loss. That it is advised that it has no remedy by which redress may be had from said damage, unless your Honorable Court grant to it the relief herein demanded by it.

Wherefore, the premises considered, your petitioner prays,

1. That a writ of mandamus may be issued and directed to said Albert S. Burleson, the Postmaster General, commanding him to vacate, rescind and annul the said order denying the use of the mails as second-class matter to your petitioner.

12 2. That a rule may be issued and served upon the said Albert S. Burleson requiring him to appear in this Honorable

Court upon some certain day in said rule to be named, and to answer the premises and show cause why the prayer of this petitioner for the cancellation, annulment and rescission of said order should not be granted.

3. For such other and further relief as your petitioner's cause may require.

MILWAUKEE SOCIAL DEMOCRATIC PUBLISHING COMPANY,
By ELIZABETH H. THOMAS, *President,*
Petitioner.

CHAS. POE,
H. F. COCHEMS,
H. O. WOLFE,
Attorneys for Petitioner.

STATE OF WISCONSIN,
Milwaukee County, ss:

Elizabeth H. Thomas, being first duly sworn, on oath deposes and says: that she is the president of the Milwaukee Social Democratic Publishing Company, the petitioner in the above entitled action; that the said Milwaukee Social Democratic Publishing Company is a corporation, and that she makes this verification on its behalf, and has authority so to do; that she has read the above and foregoing petition, knows the contents thereof, and that the same is true to her own knowledge, excepting as to those matters therein stated on information and belief, and as to those matters, she believes it to be true.

ELIZABETH H. THOMAS.

Subscribed and sworn to before me this 1st day of November, 1917.

[SEAL.]

LOUIS BAIER,
Notary Public, Milwaukee County, Wisconsin.

My Com. expires January 26, 1919.

13 *Rule to Show Cause.*

Filed November 5, 1917.

* * * * * * *

Upon consideration of the petition of the Milwaukee Social Democratic Publishing Company filed herein this fifth day of November, 1917, it is by the Court this fifth day of November, 1917, ordered that the Respondent, Albert S. Burleson, Postmaster General of the United States, show cause, if any he has, on or before the 16th day of November, 1917, at 10:00 o'clock a. m. why a writ of mandamus should not issue as prayed in said petition, provided a copy of said petition and this rule be served upon said respondent, Postmaster

General of the United States, on or before the 6th day of November, 1917.

WILLIAM HITZ,
Justice.

Marshal's Return.

Served a copy of the within rule and petition on Albert S. Burleson, personally, by service on J. C. Koons, First Ass't Postmaster General on November 6, 1917.

MAURICE SPLAIN,
U. S. Marshal.

O'M.

Answer of Defendant.

Filed November 16, 1917.

* * * * * * *

The respondent, Albert S. Burleson, Postmaster General of the United States, reserving the benefit of exception and obpection to the errors and insufficiencies of the petition for the rule to show cause, and to the jurisdiction of the Court, and to the lack of status of relator to ask for, or to be granted, the rule to show cause,
14 nevertheless, answering the same, states as follows:

One. For the purposes of this suit, he admits the corporate capacity of the relator; that its principal office is located at Milwaukee, Wisconsin; that it has published a daily newspaper known as the Milwaukee Leader for several years last passed, but as to the other matters in paragraph one of the petition alleged, he says that he has no knowledge.

Two. As to the allegation contained in paragraph two of the petition, relative to the amount of money invested in the relator's business, he says that he has no knowledge. As to the allegation of the daily circulation of the relator's daily newspaper known as The Milwaukee Leader, he says that he has no knowledge further than the information contained in sworn statements os to the circulation of said The Milwaukee Leader, on file in the Post Office Department, and as to the allegation that said The Milwaukee Leader circulates throughout the United States, he says that he has no knowledge. He denies the allegation that the relator has complied in every respect with the laws of the Government of the United States so as to entitle the said The Milwaukee Leader to the use of the post office and post roads of the United States as second-class mail matter, but he admits that for several years past, and prior to October 3, 1917, the said The Milwaukee Leader was received and circulated in the mails of the United States as second class mail matter. As to the allegation that the income of said The Milwaukee Leader is vitally dependent upon the privilege of using said mails not only in the matter of the income secured from subscribers to said The Milwaukee Leader, but in the income secured from advertisers, the

procuring of which advertisers is dependent upon the con-
15 tinued right and privilege to use said mails, under a second-class mailing permit, he says that he is without definite knowledge. As to the allegation that the present organization and business of said The Milwaukee Leader is the result of years of organization and enterprise, he says that he has no knowledge.

Three. He admits that on June 15, 1917, there was enacted a law of the United States commonly denominated the Espionage Law, and he admits the accuracy of the copy of the letter, and the receipt of the original by the relator as alleged in paragraph three of the petition.

Four. He admits the accuracy of the copy of the printed slip contained in paragraph four of the petition, and the receipt of the original by the relator.

Five. He admits that Victor L. Berger, the editor of said The Milwaukee Leader, appeared at the hearing in response to the citation in the letter, a copy of which is included in paragraph three of the petition, and he avers that said Berger was accompanied by Seymour L. Stedman, Esquire, Attorney and Counsellor at Law, as counsel for said Berger and for the relator. He admits that the hearing was before the Third Assistant Postmaster General, upon whom, in the due administration of departmental business, the duty of conducting the hearing devolved. He denies that any inquiry was made as to matters concerning the ownership of said The Milwaukee Leader, and the authenticity of certain articles which had appeared in said paper. He avers that the said hearing was conducted in accordance with established departmental practice, after due notice to the relator, and full opportunity afforded it to offer evidence and argument, of which he is advised, it availed itself. He admits that he,
16 while in fact, was not personally present, yet he avers that, in law, he was, officially through his legally constituted representative; the Third Assistant Postmaster General, and he further avers, that in accordance with departmental practice, and also at the special instance and request of relator's representative, the said Berger, this respondent personally considered and reviewed the action of said Third Assistant Postmaster General, and affirmed and approved the same. That any inquiry was made at said hearing of said Third Assistant Postmaster General as to the specific article or offense charged, and that any such alleged reply was made thereto, this respondent, on information and belief, denies.

Six. He admits that the Third Assistant Postmaster General directed a letter to the Postmaster of the City of Milwaukee, Wisconsin, and the accuracy of the copy thereof, as set forth in paragraph six of the petition.

Seven. He admits that F. B. Schutz, Postmaster of the City of Milwaukee, Wisconsin, addressed a letter under date of October 3, 1917, to said The Milwaukee Leader, and he admits the accuracy of the copy contained in paragraph seven of the petition.

Eight. He admits the accuracy and interchange of the telegrams set forth in paragraph eight of the petition.

Nine. He says that the use of the mails has not been forbidden to said The Milwaukee Leader, and he avers that only the second-class

mailing permit of said The Milwaukee Leader has been revoked. As to the other allegations in said paragraph nine of the petition contained he says that he has no knowledge.

Ten. He admits that at the hearing before the Third Assist-
17 ant Postmaster General that the said Victor L. Berger, denied, as also this respondent avers did Seymour L. Stedman, Counsel for Berger, and the said relator, deny, that said The Milwaukee Leader had ever committed any act in violation of the Espionage Law. As to the allegation that petitioner still makes and ever will make such claim, he says that he has no knowledge, and he denies the allegation that at no time since the enactment of the so-called Espionage Law, or at any time prior thereto, that the relator has ever caused to be printed and set forth in said The Milwaukee Leader any article or articles which in any way or manner contain any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States, and he avers that on divers occasions, as hereinafter fully set forth, since the enactment of the said Espionage Law the relator has violated not only the provision cited, but other provisions thereof, persistently and flagrantly.

Eleven. As to the allegations contained in paragraph eleven of the petition, he says that he has no definite knowledge.

Twelve. As to the allegation that the International Socialists of the World and the Social Democratic Party of the United States have for many years been the advocates of international peace, he says that he has no definite knowledge. He denies the allegation that said The Milwaukee Leader has at no time published articles tending to breach any of the provisions of the said Espionage Law. He denies the allegation that there were presented no facts to the Postmaster General's Department, or that the Department has in its possession no facts or articles or writings published in said The Milwau-
18 kee Leader which come within the provisions of the said Espionage Law.

Thirteen. As to the allegation that the proceedings of the Postmaster General, his assistants and subordinates, and the order of the Postmaster General's Department, in reference to said The Milwaukee Leader printed and issued by the relator, have destroyed the property of the relator without due process of law, he denies the same, but says that he has no knowledge of the alleged effect of the said order revoking second-class mailing permit of said The Milwaukee Leader.

Fourteen, Fifteen, Sixteen, Seventeen, Eighteen, Nineteen and Twenty. He says that the allegations contained in paragraphs fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, and twenty of the petition state and incorrectly state mere conclusions of law.

He says that his action in revoking the second-class mailing permit of said The Milwaukee Leader, edited and published by the relator, involved the exercise of judgment and discretion on his part, and, in view of the facts and circumstances before the respondent and the Post Office Department in the instant case, the exercise of the judgment and discretion of the respondent and the action of the respondent are not subject to be reviewed, reversed, set aside or controlled by a court of law, nor can his action in that behalf be commanded, di-

rected, or controlled by the writ of mandamus as the relator in its petition has prayed.

Twenty-one. Yet, further, answering, he says that among other duties, he is required by statute to execute all laws relative to the postal service, to supervise, generally, the business of the Post Office Department and to prescribe regulations for the distribution of such business among the other officials and employees of said De-
19 partment, for its due performance by them.

Matter carried by mail, by the Act approved March 3, 1879 (20 Stat. 359), is divided into four classes; the classification is, by appropriate regulation, assigned to the office of the Third Assistant Postmaster General, under the supervision of this respondent. This classification is based on the character of the matter to be mailed, with rates of postage varying in each class, the lowest rate being that of the second-class, for entry into which certain conditions are prescribed by law. It thus ensues that it is the legal duty of the respondent not only to determine whether these conditions for entry of mail matter into the second class have been fulfilled, initially, so as to entitle the applicant to the privilege of the low rate of postage chargeable in that class, but also to decide, as occasion may arise, whether these conditions either initially prescribed or which may be subsequently imposed by law, are being observed in such manner as to warrant the continued enjoyment of the privilege.

Twenty-two. On the 19th day of December, 1911, there was issued, upon application of relator, by the then Third Assistant Postmaster General, a certificate or permit for the entry of its publication, The Milwaukee Leader, into the mail as second class matter, the conditions precedent to such classification having been fulfilled; this was addressed to the postmaster at Milwaukee, Wisconsin, and was in the usual form, concluding with this provision:

The authority herein given is revocable upon determination by the Department that the publication does not conform to the law,

which action, as respondent is informed and believes, and
20 therefore avers, was duly communicated to said relator by said postmaster through delivery of a true copy of the certificate to it, and said relator thereupon accepted the privilege conferred thereby and continued to enjoy it until on or about the third day of October, 1917, when the same, after a hearing granted the relator, was annulled. And this respondent, while again protesting that his action in the premises, involving the exercise of judgment and discretion in him by law reposed, is not here reviewable, nevertheless further answering says:

As to this Honorable Court is well known, the Congress of the United States of America by joint resolution of April 2, 1917, approved by the President of the United States on the 6th day of April, 1917, formally recognized and declared that a state of war, thrust upon the United States of America by the Imperial German Government, existed between the two governments; and thereafter the Congress by Act approved May 18, 1917, commonly called and known as the Conscription or Draft Law, did authorize the President to increase temporarily the military establishment of the United States, and thereafter by Act approved June 15, 1917—the Espionage Law afore-

said—did, among other things, declare every publication of any kind, in violation of any of its provisions, non-mailable, and did forbid the same to be conveyed in the mails or delivered from any post office or by any letter-carrier; and thereupon it became and was the duty of this respondent, to inquire into and pass upon publications tendered for mailing and to prevent, so far as in him the power lay, the reception in, transmission through, or delivery by the postal service of any such prohibited matter.

21 Twenty-three. From the date of the declaration of war and continuously down to the action of respondent complained of by the relator, this respondent avers that from matter received at the Post Office Department from various sections of the country, he finds that there exists an organized propaganda to discredit and impede in every way the Government in the prosecution of this war, with the purpose of defeating the objects for which the Government is spending billions of dollars and will probably be called upon to sacrifice thousands of lives. The publications forming this propaganda in many cases subtly guard their utterances in the attempt to avoid the criminal liabilities of their acts under said Espionage Law; they are nevertheless united in publishing the same character of matter, whether partially true or entirely false, and are daily accomplishing results in clear violation of law. Among these publications is that of the relator, The Milwaukee Leader, whose editor and controlling spirit is Victor L. Berger, aforesaid, an Austrian by birth but by later naturalization and adoption a citizen of the United States, owing it allegiance and loyalty.

Twenty-four. He, nevertheless, as respondent is informed and believes, and upon such information and belief avers, was one of the committee and draftsmen of a majority report, recommending, as an anti-war proclamation and program of the National Emergency Convention of the Socialist Party at Saint Louis, Missouri, immediately after the declaration of war, that is to say between the seventh day of April, 1917, and the fourteenth day of April, 1917, wherein the following occurs:

We brand the declaration of war by our Government as a crime against the people of the United States and against the nations of the world;

22 In all modern history there has been no war more unjustifiable than the war in which we are about to engage;

No greater dishonor has ever been forced upon a people than that which the capitalist class is forcing upon this nation against its will.

and among other measures recommended by said majority report were the following:

1. Continuous, active and public opposition to the war, through demonstrations, mass petitions, and all other means within our power.

2. Unyielding opposition to all proposed legislation for military or industrial conscription.

and there were also other recommendations, in the same vein, all of which appeared, at the time, in relator's publication, and which respondent craves leave, if he so desires, to present at the hearing of this action.

Twenty-five. Shortly thereafter, as respondent is advised and believes, and therefore charged, to-wit: On or about April 27, 1917, the relator sought to inaugurate through the mail a chain letter system by depositing in great numbers, circulars addressed to various parties, of which the following is a true copy, to-wit:

Address all communications to The Milwaukee Leader.

The Milwaukee Leader,

Victor L. Berger, Editor.

Daily, except Sunday—20. Phone Grand 5060.

Brisbane Hall, 528-530 Chestnut St.,

Milwaukee, Wisc.

Dear Comrades: When the Socialist Party in convention at St. Louis passed a resolution, calling upon all workers of the world to refuse to fight capitalist wars, they took the boldest and most courageous stand ever taken by a body of men—not excepting the signers of the Declaration of Independence.

The Milwaukee Leader is a paper of the people, by the people and for the people. Although it is not the largest or most powerful paper in America it has the courage to stand by what it believes to be just and right.

23 The powers that forced America into war will do their utmost to destroy the independent press that opposed them. For this reason The Milwaukee Leader needs the support of those it fought for, those who did not want war.

If you admire the opposition the Leader made against war, if you like the stand of the Leader today, if you want a paper in America to continue fighting your battles, will you do your bit to help it? Do this by sending the Leader one new subscription and mail two copies of this letter to others who are interested in our stand. Through a great series of chain letters The Leader can be made America's foremost paper, and a paper whose power will be felt.

While some are working for war, let there be many who will do their bit for humanity.

Yours for peace,

S. AMERINGER.

Twenty-six. By representations and complaints from sundry good and loyal citizens of the United States and from personal reading and consideration of the issues of the said relator's publication, from the date of the declaration of war down to the time of service of

citation upon it, and the hearing granted it in pursuance thereof, wherein in its petition relator complains, it seemed to this respondent, in the exercise of his judgment and discretion and in obedience to the duty on him reposed as well as by the general statutes as by the special provisions of said Espionage Law, that the provisions of the latter act were systematically and continually violated by the relator's publication; therefore he directed the issuance of said citation and the granting of said hearing which was duly and legally done and had by and before said Third Assistant Postmaster General, and upon review and consideration whereof by this respondent, not only in accordance with departmental practice, but at the special instance and request of relator approved the action of the Third Assistant Postmaster General and suspended and annulled the second
24 class mail privilege of relator.

Among other matters and things thus considered by the respondent himself, on such review, and, as he is advised and believes and therefore avers, at the hearing aforesaid, was a file of relator's publications for the three months next preceding the service of the citation upon it, to wit: June 17th, 1917, to September 17, 1917, in which occurred sundry editorials and other statements of the relator's publication.

During said period when the relator's publication was being issued and mailed, the government of the United States was engaged in increasing its naval forces by enlistment and its military forces both by enlistment and by the selective draft, and was also engaged in raising the necessary funds with which to meet its expenses in conducting the said war with Germany by calling upon the citizens of the United States to subscribe for and purchase the bonds of the United States and other forms of certificates of indebtedness of the United States; that during the same period the United States was mobilizing and training its military and naval forces for the conduct of the said war with Germany, and was engaged in calling upon the people of the United States to conserve food and render various services and in general, in mobilizing every resource of the United States and its people for the purpose of a speedy, effective, and successful prosecution of the said war with Germany; that during the said period the armies and navies of the nations cooperating with the United States in the said war with Germany were engaged in military and naval operations against Germany and the Government of the United States was supplying said nations from time to time with funds with which to promote their success against the com-
25 mon enemy of the United States and the said nations cooperating with the United States.

The following are a few excerpts, by date and title, from some of the aforesaid issues of said publication, the issues themselves being hereby tendered, together with the entire file, to the Court:

Issue of June 18th.

Editorial.

An Invitation.

"* * *

"The forces of commercialism are in the saddle. The daily papers, with but few exceptions, are under the control of the war advocates.

"As a result, the people are constantly fed with news and editorials calculated and intended to arouse the war spirit in them.

"They are not permitted to know the real causes and objects of the war.

"The claim is made that the war is being waged for the advancement of democracy, and, at the same time, the fundamental principles of democracy have been violated in our own country, by refusing to permit the people to vote by referendum as to whether or not they want war, and as to whether or not they want conscription, and in many other ways.

"In this situation, it becomes the duty of all those who still retain their senses to do everything in their power to get the truth to the people, to make propaganda in favor of the repeal of the conscription law or its submission to a referendum vote of the people and to promote democracy in our own country."

"* * * *.

2

From the Same Issue.

"A Statement to My People." Taken from an article by Rev. John Haynes Holmes.

"* * *

"On the morning of Sunday, March 7, 1915, I declared in this church my absolute and unalterable opposition to war. 'War' I said 'is never justifiable at any time or under any circumstances. No man is wise enough, no nation is important enough, no human interest precious enough, to justify the wholesale destruction and mur-
26 der which constitute the essence of war—War is hate, and hate has no place within the human heart. War is death, and death has no place within the realm of life. War is hell, and hell has no more place in the human order than in the divine.' I then asked what 'this means in practical terms today?' And I answered 'It means not only that war is unjustifiable in general, but that this English war is unjustifiable for Englishmen, and this German war is unjustifiable for Germans. It means that this war which may in the folly of men come to America tomorrow, is unjustifiable for Americans.'

"These words spoken in this place more than two years ago, I must reaffirm this day. Nothing has happened in this period of time to change my opinion of war. On the contrary much has happened to strengthen and confirm it."

Issue of June 20th.

"Why We Are in This War.

"It is, of course, superfluous to ask our government why we have entered this war. Any student of economics and observer of national and international politics, knows very well why we have entered.

"There are at least six valid reasons. Here they are:

"First. The Entente Allies were practically at the end of their rope. If the United States had not entered, the war would have been over by this time. All our capitalist papers admit this whenever it suits their purpose—they deny it when it does not. About $3,000,000,000 of notes and other obligations which the allied powers owe to Morgan, Schwab & Co.—to the munition makers and exporters of all kinds of war material in America—might not have been worth much over 30 cents if the Allies would have lost this war.

"Second. Industrial stocks of certain kind—commonly called 'war babies' in Wall street—have reached fabulous prices. Their very existence depends upon the continuance of this war. The end of the war means the end of their prosperity. Incidentally we may also observe that there are lots of war glory and promotion to be gotten, too, out of this war—for officers and generals—sons of the capitalist and middle classes. That is a minor matter, however.

"Third. There is absolute freedom from labor troubles during the war. All resistance of the working class is simply put down as 'giving aid and comfort to the enemy' and, therefore, as treason pure and simple.

"Fourth. Under the guise of fighting for democracy in Central Europe, our plutocracy and its government in Washington is now establishing an absolute autocracy in our country with the slogan: war necessitates autocracy. Even such a hot war patriot as Senator Reed of Missouri said that 'no king, czar, potentate, Cæsar or kaiser ever exercised such powers as President Woodrow Wilson.

"• • •"

27 *Issue of July 13th.*

Editorial.

"War and Insanity.

"• • •

"This fact has from time to time been touched upon by writers at the front. It is said that in France there are certain closed cars which are used for the purpose of transporting the insane away from the front, and that there are sometimes long trains made up exclusively of them.

"Capitalism, even in time of peace, is gradually driving the people insane. Year by year, the numbers increase. They have become appalling.

From the Editorial Page of the Same Issue.

By R. A. Dague.

"Seymour Stedman, in an article published recently in The Leader under the caption Democracy for Whom? asks several questions, among which are the following:

"Are we asking for democracy for the Belgian king—and the mangled rubber pickers of the Congo? Democracy for the British king and his underpaid, underfed, undersized, population, most of whom could not be enlisted because their souls and their hearts have been destroyed by a brutual industrial system? Let us hope that may be one of the terms of peace.

"Democracy for India, which has been plundered to the tune of about $1,000,000,000 per year, and where gaunt famine crouches before vast exports?

"Democracy for Ireland, robbed for 700 years, and butchered for her patriotism when she protests?

Whose democracy and liberty is the object of our divine mission, with Elihu Root as the Herald of the dawn?

My father was German; my mother was English. I love the people of both these countries. I am an American but both my patriotism and religion was stated by Thomas Paine, who said: "The World is my country—to do good is my religion."

Issue of July 20th.

Editorial.

"The Russian Constitution."

"* * *

The Constitution of the United States was purposely made difficult to amend, in order that we might not have democracy in this country."

"* * *"

28 *From the Same Issue.*

Editorial.

"Guessing Contest.

The national board for historical service is conducting a prize competition, for teachers on the subject, 'Why the United States is at War.'

"In each state a prize of $150 will be paid for the best guess, and a prize of $75 for the second best guess.

"We call it a guessing contest because it is evident to any sane person that if there were any general understanding as to why the nation is at war there would be no occasion for such a contest. It is

just because most of the people are not able to discern any good reason for our being at war that such a contest is planned.

"No doubt it is expected to gain two objects by means of the contest. First, to get a great number of teachers in favor of the war by throwing out a financial bait to them. Second, to convince others that there is some good reason for our being at war.

We socialists already know quite well why the nation is at war.

It is at war for commercial supremacy as the Chicago Tribune practically admitted some time ago.

We are at war for the financial benefit of the capitalists of the United States. They desire imperialistic dominion, in common with the capitalists of England, in order that together they may control the world and reap fabulous financial gains.

This is the object.

It does not necessarily follow that this will be the result, however of an allied victory. Things do not always turn out as planned.

Any teacher who wants to win a prize had better not give this true reason.

If she does, she will no doubt be awarded the booby prize.

For our dear capitalists don't want the true reason known. That would make the object fail utterly. In order to get the people to support the war vigorously, it is necessary for them to try to fool the people by making them believe that the war has an entirely different object."

From the Same Issue.

Editorial.

"Remember Tonight."

"Again we wish to remind you that the meeting for the organization of the Milwaukee Branch of the People's Council is
29 to be held at the Public Library building this evening.

Never mind the heat. Come anyhow.

It is also hot in the trenches. The high cost of living, and the other evils and sacrifices incident to war, are getting hotter in this country continuously.

The People's Council holds promise of ending these evils, or at least easing them. If public opinion counts for anything, this organization, by focusing the desires of millions of the people for peace, will bring peace sooner than it would otherwise come. So we can afford to brave the heat in order to carry on this exceedingly important work."

Issue of July 31st.

Cartoon of the Liberty Bell.

"The above cartoon was one of the subjects which the post office department considered objectionable in the August Masses and

which caused a decree barring the issue from the mails. A temporary injunction, recently granted by Judge Learned Hand, of the federal bench, has restrained the department from taking action.

Issue of August 1st.

Editorial.

"The International Must Act.

"* * *

"But the French and British have sent their statesmen and generals—and, amid much dining and wining, they have persuaded us not only to give them billions of dollars, but also to send millions of men to go somewhere in France or somewhere in Flanders and die there, in order to break the 'Iron battle line.'

Now, why must we do that? What have the German people—of the same blood as one-fourth of our own people who are closely related and intermarried with the other three-fourths—done to us Americans that we should kill and get killed to please Viviani, Briand and Ribot, and the Right Honorable Mr. Arthur Balfour and Lord Alfred Northcliffe?

"Surely every American wishes from the bottom of his heart that kaiser, junker and plutocrat should disappear from the face of the earth. But these classes in Germany are no worse than the corresponding classes in England or in France. And by killing off millions of German working people—and incidentally also our own—the world will surely not be safer for democracy than before.

"And it is not for our country to convince the Germans by force of arms—a people as intelligent and as educated as ours in every respect—what form of government the Germans are to have.

"If the Germans do not want monarchy and nobility—the Germans must abolish them. It would be just as tyrannical and unjust for us to force upon Germany through terrible bloodshed a certain form of government they may not want, as it would be for the Germans to force it upon us.

"As for democracy—the German Social-Democracy is surely infinitely more democratic than our southern Democrats and more Democratic than Pierpont Morgan and his northern bankers, with Elihu Root and Theodore Roosevelt thrown into the bargain.

"Why not trust to the German Social-Democracy—to change conditions in Germany as the German people will decree?"

"* * *."

Issue of August 2nd.

Editorial.

"Difference of Opinion.

"In the newspapers that are boosting the war there is a very frequent reiteration of the assertion that it is an honor to be drafted.

"Just why is this so often repeated? One would be led by this repetition to believe that there must be some doubt about it. 'He doth protest too much.'

"Among the young men between 21 and 31 there seems to be a different view of the subject. They do not ask each other, 'Have you had the honor to be drafted?'

"On the contrary, the question they ask is, 'Did you escape?' Or, 'Were you caught?' These and questions of similar tenor are the ones you can hear if you mingle with the young men."

Issue of August 3rd.

Editorial.

"The Democracy at Home."

"* * *.

We must never forget that there are about thirty billion dollars to be spent, hundreds of generals and many thousand other officers to be created. If Germany should declare for democracy—we would either 'not believe it,'—we denounce it as a lie, a plot and a new trick—or we would have to fight to 'establish law and order,' to safeguard our future, or fight for any other reason. Otherwise all the 'war babies' in Wall street would die.

"And as for our constitution—everybody who has studied that document and its history knows that 'the men who fashioned the symmetry of the republic' never intended that the constitution should guarantee democratic freedom.

"* * *"

31 "These are the powers of our president in times of piping peace. He has often been called 'the autocrat in a frock coat' to distinguish him from the old world autocrats in uniform.

"But the war legislation that was kicked through the rubber stamp congress during the last five months has added immensely to this supremacy. He now has greater authority than Jenghis Khan, the ruler of the Mongols and the conqueror of the Russians ever possessed. Nevertheless, we realize that Woodrow Wilson must have such surpassing preponderance in order 'to make this world safe for democracy' and also to save the investments and bonds of Pierpont Morgan and his friends.

"The trouble is only that Sir Roger L'Estrange, the European press censor, was right when he said: 'The people have an itch for taking part in the affairs of government.' And some of them still think."

Issue of August 4th.

Editorial.

"Squirming Jingoes.

"It is ludicrous to see the jingoes trying to squirm around the clear opinion of Hannis Taylor holding the conscription law unconstitutional.

"In the article we published he went into the history of the matter and showed that all soldiers and potential soldiers outside of the regular army come under the head of militia. This is well settled by decisions of the courts. To call them a national army does not change the facts. It is a mere evasion. There is no claim made, even by the jingoes, that they are a part of the regular army.

"Under the express terms of the constitution, therefore, the conscript army can be used for three purposes only—to execute the laws of the union, to suppress insurrections, and to repel invasions.

"It follows necessarily that this army can not legally be sent outside of the country. It can only be used for the three purposes mentioned.

"Of course, the jingoes—those of them who are able to understand the legal point involved and the plain wording of the constitution—know full well that such is the case. There are none so blind as those who will not see. They know they will be deliberately violating the constitution if they send this army outside the country. They intend to do it anyhow. And they will try to put on a straight face and pretend to believe that it is entirely in accord with the constitution. They will have some of their legal lights issue longwinded dissertations on the subject in order to save their faces.

"They may even get the supreme court to reverse itself. The judges of the court are in constant association with the class of people who are backing the war, and they might very easily
32 absorb the jingoe sentiment to such an extent that they would decide the case in accordance with prejudice instead of the constitution.

"But we hope not.

"As a matter of fact, the supreme court does not have any legal power to pass upon the constitutionality of laws of congress, but it assumes that power, and we wish it would decide this question right, if it must decide it at all.

"However, the matter ought not to go to the supreme court at all. Since the administration can not but know that the law is unconstitutional, it should settle the matter by obeying the constitution and not sending the troops abroad."

Same Issue.

Editorial.

"Why Not?"

"It is stated 'on the highest official authority'—so runs the report—that the sole object of the United States in the war is to lick Germany.

"From Secretary Lansing's speech and many other sources one gathers the idea that it is the intention of the powers that be in this country to prosecute the war to the point of military conquest. That is, whip Germany to a frazzle, so that Germany can be divided among the allies, or any desired peace terms whatsoever can be positively dictated by the allies and Germany have nothing to say about it whatever.

"This may be only a bluff. We do not pretend to know. Under the vicious undemocratic secret diplomacy system which we have in this country—and in all the belligerent countries except Russia—the slave people are kept in ignorance as to what their masters intend.

"But if such is the intention, we have no hesitation in saying that it is unworthy of a great nation. Peace without victory is just as patriotic now as it was last December.

"Such a course would sacrifice millions of our own young men, and also millions of the men of the other belligerent nations on both sides of the battle line, in a war of subjugation. It is the same object which was sought by the semi-barbarous military chieftains, Alexander the Great and Julius Cæsar. The word 'subjugate' comes from two Latin words, 'sub' and 'jugum,' meaning 'under' and 'yoke.' It therefore means, literally, to bring under the yoke, like an ox, and reduce to utter submissiveness and obedience.

"Are we to spend millions of lives for such a purpose?

"On the contrary, we should make peace just as soon as an honorable peace can be made.

"And from all indications, Germany is ready to make such a peace now.

33 "Let the allies offer to enter into a peace conference. Should such an offer be refused by Germany, the position of the allies would be immeasurably strengthened. But we do not believe it would be refused. We believe it would result in a peace fair to all.

"Why not do it?"

Issue of August 6th.

Editorial.

"The Matter With Russia.

"There is a great deal of discussion going on as to what is the matter with Russia.

"It is quite well recognized that the Russian soldiers are not cowards. They have proved their undaunted heroism too often in the past for anyone to bring such a charge against them.

"Why is it, then, that they give way and retreat, instead of fighting? Lots of people are guessing at the answer to this question. We will add our guess for what it is worth.

"Our guess is that the phenomenon is caused by Russian distrust of the other allies.

"The Russians stated their peace terms—no forcible annexations, no punitive indemnities, free development of all nationalities—with perfect openness and candor.

"They had a right to expect that, if their allies were honest in their intentions, they would unreservedly accept these peace terms.

"But they have not done so.

"On the contrary, the authoritative statements and semi-authoritative statements issuing from the other allied countries, while not open and frank, always carry the idea that military subjugation must be had before peace will be considered.

"In other words, the other allies are bent upon conquest.

"The Russians begin to realize this. And they ask themselves, 'Why should we fight for aims which are the opposite of the peace terms that we have stated? When a candid acceptance of these terms by our allies would bring peace speedily, and they refuse to accept them, are we not playing into their hands and fighting their battles of conquest if we continue the struggle? Is it not better that we should withdraw, unless they definitely show that their motives are good by accepting these fair terms and at once proposing peace?'

"This is our best guess as to the way the Russian soldiers have sized up the situation.

34 "Certainly if they have access to the capitalist press of the United States, they would get that view. For these papers are full of expressions to the effect that the allies must continue the war until Germany is crushed. They have thrown the 'peace without victory' sentiment into the discard."

From the Same Issue,

Editorial.

"A Big Business War.

"To have it impressed upon one's mind that the war is a war of the big business of one group of nations against the big business of another group of nations, each using the workers to do the fighting and the dying, it is only necessary to attend meetings of big business men.

"We recently had this experience, and we had it rubbed into us good and plenty that it is a business men's war.

"Oh, of course, the big business men do not intend to do the fighting.

"Not on your life.

"In fact, one of the speakers, himself a big business man, in urging them to be liberal financially, frankly said, 'I don't suppose any of you intend to go to the front—I don't intend to.'

"It was quite a safe assumption.

"They will keep at a safe distance. Some of them will make a few financial sacrifices for the time being. Others will make unusually large profits during the war. All of them expect to profit by the war eventually.

"To them, patriotism and profits are the same.

"We have yet to meet anyone who is enthusiastic over the war except big business men, bankers, and their satellities among the lawyers and others. And a great many of these are not enthusiastic over it.

"It is a business man's war, and the object is profits, not democracy."

Issue of August 7th.

Editorial.

"Forces of Evil and Good.

"A short while ago, in an editorial about the People's Council, we said that the forces of evil are thoroughly organized, and that through the People's Council the forces of good are organizing.

"The New York Times quotes this expression and says that, by forces of evil, we mean the mass of the American people, and by forces of good, we mean the anti-patriots and the lovers of Germany.

"Of course the Times is not really under any misapprehension.

"Nevertheless, we are very glad to tell the Times and everybody else what we mean by the forces of evil and the forces of good.

"By the forces of evil we mean the profiteers who forced the United States into the war for their own financial benefit and who are engaged in boosting for the war with all their might. Vast sums of money were loaned to the allies by American capitalists. As there was some danger of the allies being defeated, these immense investments or speculations seemed to be in jeopardy. The munition manufacturers and food speculators were carrying on a thriving trade, making huge profits by helping to kill and maim millions of human beings. The whole capitalist class desired commercial supremacy for the United States in order that they, the capitalists, might get still richer.

"These are the forces of evil.

"They urged us into the war for their own selfish financial interest.

"And they are urging us to stay in the war after we could make an honorable peace, because their selfish financial interest requires that they, in common with the capitalists of England, should conquer the world in order to control the commerce of the world and pile up still more enormous fortunes than they have now.

"By the forces of good, we mean the mass of the American people, who never wanted the war, but had it thrust upon them against their will, and who now want peace.

"The masses of the people are honest. They despise the devious tricky wiles of the capitalists. Unlike the capitalists, they are neither anxious nor willing to fatten off the corpses of their fellow men. They do not relish the idea of our great nation indulging in a war of aggression for the financial benefit of the capitalist class. They want our government to offer peace on fair and reasonable terms.

"But—also, unlike the forces of evil—they are unorganized. For this reason, the war was forced upon them against their wishes. For this reason also they have been unable to make their influence felt for peace.

"The People's Council affords them an opportunity to become

organized and use their influence. Therefore, we say that, through the People's Council the forces of good are organizing."

36 *From the Same Issue.*

Editorial.

"Ain't it Fierce?

"The Jingoes are hunting for a slogan.

"Worse than that. They are wailing for a slogan.

"And we don't blame them. They have a nice big war and no fetching slogan. That is, no slogan that fetches the enthusiasm of the people. As one of them says, 'Make the world safe for democracy' lacks 'kick.'

"We might add that it also lacks truth. But that makes no difference to the jingoes.

"* * *

"Ain't it fierce to have a nice big war and no slogan to fight it with?

"It is plain that we shall have to come to the rescue, like Betsy.

"You hold the baby, jingoes, and we'll make one. We're long on slogans.

"Make the world safe for Morgan's millions!

"Down with democracy, up with autocracy!

"Remember the price of coal!

"He kept us out of potatoes!

"There you are, jingoes. Take your choice. If none of these are suitable, we have lots more in our nut."

Editorial From the Same Issue.

"Who Are They?

"In the recent declaration made by the committee on foreign affairs of the workmen's and soldiers' council in Petrograd, dealing with the coming Stockholm conference, there appears the following significant statement:

The impression is growing that, guided by world imperialists, hands of sabotage are working secretly to destroy the work of drawing together the toiling masses of all countries in behalf of peace.

In considering why the Russians show an indisposition to continue fighting, we recently expressed our best guess to the effect that it is because they suspect the motives of the other allies.

This statement made by the foreign affairs committe of the workmen's and soldiers' council of Russia would seem to bear out our theory.

"It would be interesting to know just who the world im-
37 perialists are who have come under the suspicion of the Russians as trying to sabotage peace.

"Do they include the high officials of the United States who are withholding passports from the Socialist party delegates to the Stockholm conference?

"Have the Russians concluded that these gentlemen are 'world imperialists whose plans of world imperialism might be interfered with if peace should result from the Stockholm conference and who therefore prevent the American delegates from attending?'"

Issue of August 10th.

Editorial.

"Kaiserizing America.

"We hope the new food law may do some good. If the president and his man Hoover reduce the cost of living, so far so good.

"But we desire to call attention to the fact that the passage of this law is a distinct case of Kaiserizing America, even more than it has hitherto been Kaiserized.

"* * *"

Editorial From Same Issue.

"Traducing America.

"Mr. Root says that the only anti-American feeling in Russia 'is among Russian-Americans who swarmed to Petrograd by the thousands and showed their gratitude to our country by traducing her.' Isn't it funny that America was criticized only by those who knew the most about America?

"Isn't it funny that those who had confidence in America were confined to those who knew nothing about America?

"Yet, we do not have to look far for the reason.

"Those who know nothing about America have been fed on misstatements from many sources. They have an entirely erroneous impression of this country. They think it is a great free democracy. They do not know that it is a hide-bound plutocratic republic and that it is a financial autocracy as well as political autocracy.

"But the thousands of Russian-Americans who swarmed to Petrograd and 'traduced' America do know all these things.

"They know about the massacre at Ludlow. They know about the frame-up at San Francisco. They know the conditions in the steel and mining and lumbering and other industries. They know how the capitalists use the police and the troops to put down
38 strikes and keep the workers in subjection. They know how workers are deported from their homes. They know how workers are hanged by the neck until dead. They know how women are denied the ballot. They know how the cost of living climbs, while wages are kept down. They know that every few years there are millions of unemployed who are allowed to starve while the capitalists go serenely on with their lavish merrymaking.

"We imagine that the Russian Americans told some of these

things in Petrograd and that Mr. Root considers this 'traducing' America.

"Wouldn't it be better to try to make America worthy of the good opinion of those who come here from other lands?"

Issue of August Eleventh.

Editorial.

"Gaining Russia's Confidence.

Mr. Root says what the new Russian republic needs most is assurance that America is in the war unselfishly, completely and to a finish, and that it is earnestly and unflinchingly in the war for democracy against autocracy and that it will stand by Russia no matter what the cost.

"Some days ago we expressed our best guess that the 'trouble' with Russia is that she suspects the motives of her allies.

"If we are at liberty to try to get the unexpressed meaning out of Mr. Root's cryptic remarks, they would seem to corroborate our theory.

"It seems from what he says that Russia doubts whether or not the United States is in the war unselfishly. Also that Russia doubts whether or not the United States is in the war earnestly for democracy against autocracy.

"Just how are these doubts dispelled?

"There are two ways in which they may be dispelled.

"One way is by going right ahead with the present hypocritical program, allowing America to remain an autocracy, prosecuting the war for commercial supremacy and world domination, and endeavoring to fool Russia by suave diplomatic utterances which do not mean what they say.

"Another way is by turning about face, establishing democracy in the United States, accepting Russia's peace terms, endeavoring to make peace with the world on those terms, and gaining Russia's confidence by deserving it.

"The latter is what we ought to do.

"The former is what the powers that be are the most likely to do—because they are that kind."

39

Issue of August 13th.

Editorial.

"Golden International Conspiracy.

"That there is a powerful international conspiracy of capitalists and Tories in existence to keep the world at war in order to keep the Socialist movement from taking hold, we have always suspected,

of course. All the clap-trap about 'fight for democracy and against autocracy' is pure swindle and was never even thought of when the war broke out.

"• • • •.

"The fact is the 'Golden International' must have war for a hundred reasons—especially for the one paramount reason—to stop, if possible, the rising tide of Socialism.

"• • • •.

"The government of the United States has already taken steps 'to block the attempt' of the Red rascals of making peace and 'organizing the world on a Socialistic basis.' The English, Russian and French governments are not strong enough, of course, to emulate the noble example of our administration.

"But Sam Gompers has, during the last 30 years and 30 days repeatedly expressed his disapproval of the International Socialist movement and his love for the capitalist form of society."

Issue of August 20th.

Editorial.

"The King Salutes.

"It was so nice of King George of England to salute the American flag.

The American people have been waiting and longing for this soulful hour.

"We remember with keen regret the fact that our boorish forefathers seemed to have an unreasonable grudge against King George the Third. They had a foolish notion that kings were unnecessary. They imagined that, in order to have a democracy, it was necessary to get rid of kings. For a long time the lovely schoolma'ams taught the youth of America that King George was perfectly awful and that we must always revere our heroic ancestors who put a crimp in his ambitious plans.

"But it is a joy to know that it is no longer thus. At least the heinous sin of our revolutionary grandsires have been revealed to us. We now look back with shame upon their dirty deeds.

"And yet, how could they have been expected to know any better?

"They didn't have any Pierponts nor Woodrows to tell them.

"They only had George Washington and Thomas Jefferson and Benjamin Franklin and Thomas Paine and a lot of other similarly prejudiced folk. These guys made unkind remarks about King George. They biased the minds of the people against his gracious majesty.

Oh that Pierpont and Woodrow had been there!

"The whole history of this nation might have been changed. Instead of stealing off in the dark like we did, and leaving England in the lurch, we might today have been proud subjects of King

George, like the people of Ireland and India, who love him like a snake—beg pardon—we meant to say like a father.

"But why mourn for what might have been?

"Let us rejoice and be exceedingly glad that we have at last seen the error of our way, and that, like the prodigal son, we have at length returned to our father, the king, and received his blessing."

Issue of August 21st.

Editorial.

"*It Makes a Difference.*

"* * *

"Now, the situation is different. We are in a war for the benefit of the capitalists of the nation. It may be desirable that certain industries should be taken over in order that the people may be appeased while commercial supremacy is being gained for our plutocrats."

Issue of August 23rd

Editorial.

"*Abolishing the Presidency.*

"* * *

"The President, for example, can and does plunge the nation into a cruel war against its will. That is, he is allowed to conduct the foreign relations of the nation to suit himself, and, by his mistaken policy, to get the nation into a dilemma that results in war. That is one of the respects in which our nation utterly fails to be a democracy.

41 "All along the line, the president has too much power.

"* * *

"Yet we find the president himself, although clothed with and exercising all these autocratic powers, blandly asserting that we are fighting for democracy!

"Learn, brothers of Russia. Learn from us, before it is too late.

Another Editorial from the Same Issue.

"One Instance.

"There comes to our hand The People's Press, published in Cincinnati, Ohio. In it there is an article, presumably written by Herbert S. Bigelow, a part of which we want to give to you.

"Today I called at the home of a mother of an only son who was drafted. Eight years of sacrifice—this father and mother had made—to get this boy through high school and university. He has been

one year out of school and this devoted family of three had begun to enter into the reward of their long labor.

Then the draft came—and the young man was called.

As I took that mother's trembling hand this morning, moist from the wash-tub, and saw the tears coming down her cheeeks as she struggled to say to me what was in her heart, those words of the secretary of War flashed into my mind.

'I am immensely proud of what has been done.'

"Mr. Secretary, if you could have on your heart for one hour the burden now felt by the mothers of America it would crush you.

"Multiply this woman by many thousands and we have a slight realization of the tragedy that is going on in our midst.

"Is it any wonder that those who know the cause and the object of the war feel that all that is sacred in America has been profaned and outraged?"

Editorial from Same Issue.

"Dead as the Mummies.

"We are informed that in Canada the war spirit, with the exception of the newspaper headlines, is as dead as the mummies of Egypt.

"In the United States the war spirit, except in the newspapers, never was any more alive than the mummies of Egypt.

"We are glad to know that it is dead in Canada. We hope it is equally dead in all the other warring nations on both sides of the battle line. If so, it means that the people of all these nations are going to vigorously insist upon peace and compel their various governments to act for peace soon."

42

Editorial from Same Issue.

"Sufficient Reason.

"The debate over the war revenue bill brings out the fact that the first two years of America's participation in the war are expected to result in the expenditure of $40,000,000,000 and in the killing or wounding of 400,000 men.

"We have just one suggestion to make in this connection.

"That suggestion is that you should join the Socialist party and the People's Council, if you have not already done so, and work for peace.

"Is any further argument needed?"

Editorial from Same Issue.

"The New Autocracy.

"* * *

"In the popular phrase of the day, congress has agreed to 'let George do it.' And the result is the creation of a virtual autocracy,

entirely repugnant both to the letter and to the spirit of the constitution. To anyone who ventures to criticize the wisdom of this policy, the only reply vouchsafed is a hysterical appeal to 'stand by the president.'

"• • •.

"Today the case is entirely different. We are threatened by no armed insurrection in the United States and the political heirs of the leaders of the rebellion which Lincoln suppressed are now in power at Washington. We are, however, engaged in an undertaking upon which the framers of the constitution would have looked with horror; namely, military intervention in an European war."

Issue of August 24th.

Editorial.

War Profits.

"Although we always knew the war profits made by the big capitalists of the United States were immense, and it is pretty hard to astonish a Socialist with anything along that line, we shall have to 'fess up to the fact that we are amazed at the colossal profits set forth in the minority report of the committee on finance, submitted to the United States senate by Senators La Follette, Thomas and Gore."

• • •.

"There is no further need to ask why we are at war. In these figures you have the reason. Had the war come to a close, these profits would have been discontinued. Here you have the reason why a desperate effort is made to deceive the people into believing that we are fighting for democracy. Here you have the reason why free speech and free press are curtailed. Here you have the reason why the constitution is being tramped in the mud. Here you have the reason why everyone who wants peace is a traitor.

43

Couple these profits with the loans made to the allies, and the lust for commercial conquest of the world, and you have the whole story. We are at war, sacrificing life, property, comfort and morals, in order that the ravenous greed of the plutocrats of America may be still further satisfied. To call them hogs would be unfair to the four-footed hogs. The four-footed hogs lie down in the slop when they have enough. And the four-footed hogs do not live on carrion either. But these plutocratic beasts never have enough. And they feed upon the corpses of men slain in battle."

• • •.

From the Same Issue.

"Censoring God.

The publishers of Bibles are away behind with their orders. The war created an unprecedented demand for them, especially for the New Testament.

This is good news. We hope the purchasers of these books will read them.

They will probably have to do it on the sly, however. For, as you know, the Bible is treasonable nowadays. It says, "Thou shalt not kill." This infamous doctrine has been put over on the human race for a long time. But our latter day commercial and political saints will have none of it. They are a whole lot wiser than God—who is said to have given the commandment, "Thou shalt not kill" to Moses. They have amended the commandment by striking out the word "not", so as to make it read "Thou shalt kill". Before any more Bibles go to press, we suggest that that word be gouged out of the plate. Of course, it will leave a blank spot on the page. But that's all the better. It will call the attention of the present and future generations to the fact that our wise commercial and political saints overruled God and censored His word.

Then, they must remember that the New Testament reaffirms the above mentioned commandment. But that isn't the worst. It also adds a new commandment—"that ye love one another." Now isn't that horrid? That will have to be gouged out too.

And, while we are about it, let's gouge out the place where it says 'Blessed are the peacemakers for they shall be called the children of God.'

There are a number of other anti-bloodshed and anti-hatred expressions that also call loudly for the chisel. When the cen-
44 sor gets through, it will be a badly speckled book, but it will be safe and highly moral. All the treasonable utterances made by God and His Son will have been eliminated.

And the war fan preachers will no longer be embarrassed every Sunday when they go to read the scripture lesson."

From the Same Issue.

"Home-made Camouflage.

"* * *

Our officials at Washington autocratically refused to refer the question of war or no war to a referendum vote of the people, as requested by vast multitudes of the people, but they try to disguise their autocracy by asserting that it is a war for democracy.

The same officials autocratically enacted the conscription law, in spite of the insistent demand of the people for a referendum vote, but they try to make it appear that the conscripts are to fight for democracy.

The postoffice department autocratically bars from the mails certain papers and periodicals because they stand for genuine democracy, but endeavors to justify it on the ground that it is necessary for the promotion of democracy.

Many scores of newspapers, not wanting the people to realize that the country is engaged in a war for commercial conquest and world imperialism, daily make believe that it is a war for democracy.

They make a big holler about Belgium, and try to justify the deportation of American working men from their homes in the name of democracy.

And so on down the line."

Issue of August 25th.

Editorial.

"Observation."

"* * *.

But what of the great majority of the people who have not displayed the flag in their windows or otherwise? Are they wicked? Are they unpatriotic? Are they pro-German?

Not at all.

The only trouble with them is that they reserve the right to be their own judges as to whether or not the flag is being used for a good purpose. When they believe that it is being used for a bad purpose, they do not want to further that purpose by displaying it. If they believed the purpose to be a good one, the whole city would be fluttering with flags, and no jingo paper would need to say a word in order to have this done. It would be done spontaneously. And the jingo papers wouldn't want it done, for if it were a good purpose they would be opposed to it.

The masses of the American people have the flag in their hearts all right, even though they do exercise their conscientious discretion as to when they shall display it on their houses."

From the Same Issue.

"A Crystal Gazer."

"When it comes to secret diplomacy, our administration at Washington is a past master.

It seems, however, that our administration does not have anything on the foreign office of England in this respect. In an article in London Justice, H. M. Hyndman says:

The one idea of our leading politicians in the foreign office and elsewhere is to take our pay and to lie to us persistently about our own business. That is the plain truth.

Hyndman is himself a war fan. It is therefore, not probable that he would criticize the powers that be in England any more severely than they deserve.

If he can see as far as the expression quoted above would indicate, it would seem that it is high time for him to come out of his three-year trance and throw the whole weight of his influence into the

scale for peace. He is a crystal gazer. The capitalist hypnotists directed him to fix his gaze on the hideous German monster until he forgot all other monsters and came under the spell.

We have a few crystal gazers in this country too. While under the influence, they can see nothing but the German monster. All hideous monsters at home are as if they did not exist.

But we are glad to say that all the Socialists except an insignificant few are clear-headed.

They can't be hypnotized by the capitalist wizards. They know that the greatest enemies of the American people are at home. They know that the war is a struggle of the capitalist class of one group of nations against the capitalist class of another group of nations, and that each side is using the workers for its own purposes. Having grasped this class basis of the struggle, they are proof against the machinations of the fakirs who would hypnotize them and make them dance to the jingo music."

* * *.

46 *Issue of August 27th.*

Editorial.

"Looking for a Place to Light?"

"* * *.

Our own private opinion is that God still believes in the commandment, 'Thou shalt not kill', and in the saying in the sermon on the mount, 'Blessed are the peacemakers for they shall be called the children of God', and that, therefore, if He is taking any part in the matter, He is on the side of the People's Council."

From the Same Issue.

"Cleaning up the World."

"* * *.

Babies dying like flies for lack of the necessaries of life!

Are we not a lovely bunch to start out to compel the world to be good?"

Issue of August 28th.

Cartoon.

"Stimulating Business."

"The decision of the alliance to hold a national conference at Minneapolis, about the time when the People's Council conference was to have been held there, is another action which shows that it is a cheap imitation—with hard emphasis on the word "cheap"; but

don't overlook the word 'imitation' either. If this cheapness does not incur the secret contempt of the alliance's own sponsors, then we overrate their intelligence and self-respect.

We'll bet a pound of flesh that the alliance will be loved and petted by the plutocrats and that it will not have any difficulty in finding a hall to meet in.

Imitation is the sincerest flattery."

From the Same Issue.

"Military Mob Violence."

"* * *.

Professional patriots may rashly applaud the soldier boys for their mob violence.

But soldier boys do not make fine distinctions.

Soldier boys may just as easily break up other lawful meetings.

They may break up meetings held to protest against keeping the president in office for life.

47 They may break up meetings held to prevent the rich from taking away the votes of all citizens having less than $10,000 a year.

Soldier boys on mob violence bent do not discriminate.

Professional patriots take notice."

From the Same Issue.

Editorial.

"The Hun Within."

"Mr. Roosevelt says that our worst enemy is the Hun within our own gates.

This is indeed true. The expression should make a hit.

The Huns within our own gates are those who insist upon a war of aggression and conquest, who curtail the constitution rights of free speech, free press and free assemblage, who deport workingmen from their homes, who oppress the people with high prices, and who rob the whole working class of most of their earnings.

We did not expect the colonel to make such an admission. That he did not mean it so, goes without saying. But the fact remains that the men with whom he is co-operating at the present time are the Huns within."

Issue of August 29th.

Cartoon,

"Hiding 'Slackers.'"

From the Same Issue.

Editorial.

"The President's Reply."

"To all those who expected anything better from the president, whether they be Catholics, Protestants, or otherwise, his reply to the pope will be a great disappointment.

It does not come as a surprise to us, though we tried to hope against hope that he might see fit to make his reply accord with the wishes of the masses of the American people.

For, the masses of the American people want peace. They will agree with most of the censures which are hurled at the kaiser, but they believe that it is, for the most part, a case of the pot calling the kettle black. They realize that secret diplomacy holds sway in all of the allied governments, with the possible exception of Russia. They know that in all of the allied nations, including our own, the people did not want the war. They do not believe the present rulers of any of the belligerent nations—also with the possible exception of Russia—are to be trusted.

48 The reasons given by the president for his unwillingness to enter into peace negotiations at this time, will therefore strike the American people as wholly fallacious, if not indeed ludicrous.

It is necessary that the peace forces of the nation should proceed with redoubled energy to roll up the ever increasing volume of peace sentiment. Eventually, it will become so great that it can no longer be ignored."

From the Same Issue.

Editorial.

"Cheap Imitation."

"The American Alliance for Labor and Democracy, of which Samuel Gompers is chairman and J. G. Phelps Stokes is treasurer, is a cheap imitation of the People's Council, whose full name, as sometimes used, is the People's Council of America for Democracy and Peace.

In its calls for funds, the alliance appeals 'to all friends of international democracy'—another evident effort to imitate the real thing.

Issue of August 30th.

Editorial.

"Grasping at Straws."

"The war boosting newspapers are always on the lookout for arguments with which to attempt to convince the people that the United States had good reason to declare war. They realize that the people feel as Max Eastman does—that whenever there is a war for democracy they will be able to recognize it. So these papers see the need of argument.

With the eagerness with which a dying man grasps a straw, they have seized upon the testy statement which the kaiser is said to have made, 'I'll stand no nonsense from America; America had better look out after the war.'

We do not know whether the kaiser made this statement or not. But, if he did, we do not consider the kaiser a model to pattern after. If it be true that the kaiser went to war because of what he feared might happen to him later, we should not imitate him. It is not only poor morals, but also poor policy, for, if the kaiser had attacked us after the war, he would have had to try the impossible feat of invading America. He himself would then have had the 3,000 mile stretch to cover—not we. Under those circumstances, we could simply have eaten him alive. And, regardless of what they might have thought of the origin of the trouble, the people of this country would not have been lethargic regarding the war, as they are now, because they would have looked upon it as a war of defense.

49 We must also remember that at the time when the remark is alleged to have been made, the United States was pretending to be neutral, while, in fact, assisting the allies by shipping great quantities of munitions and food to them. If the remark was made, this fact no doubt caused it.

* * *."

From the Same Issue.

Editorial.

"Unconstitutional."

"In its pamphlet, 'Conscription and the Conscientious Objector', the American Union Against Militarism, whose address is 70 Fifth Avenue, New York City, includes a memorandum by its attorneys summarizing the grounds upon which they deem the conscription law to be unconstitutional. These grounds are as follows:

1. The conscription law violates article 1 of the constitution, and particularly Subdivision 15 of Section 8 of that article, which confines the purposes for which the militia may be called forth to these three: To execute the laws of the union, to suppress insurrection,

and to repel invasions. Also Subdivision 16, specifically reserves to the states the control of the militia.

2. It violates Article I, Section 1, in that it assumes to delegate to the president the powers specifically reserved to congress, namely, legislative powers and the power to raise and support armies.

3. It violates the thirteenth amendment, which prohibits involuntary servitude except as a punishment for crime, whereof the party shall have been duly convicted.

4. It violates the first amendment, which prohibits congress from making any law respecting an establishment of religion or prohibiting the free exercise thereof, in that it assumes to recognize a certain religion and to discriminate in favor of the adherents of that religion by exempting them from service. It denies that 'free exercise of religion' guaranteed by the amendment.

5. It violates the fifth amendment, in that it subjects citizens to deprivation of life, liberty or property without due process of law, since it assumes to confer upon the president discretionary and arbitrary powers in the selection of citizens for drafting into the army.

6. It violates Article IV, Section 4, which guarantees to every state a republican form of government. By the terms of the act, citizens of the various states may be kept in the army in foreign service during 'the period of emergency', which may be forever, subject to military law and possibly under the command of a foreign non-republican government. If 2,000,000 citizens can thus be drafted and kept under martial law, 10,000,000 can be so drafted, and the entire male population may be kept in the army indefinitely, thus substituting military autocracy for the republican form of government.

50 The above are the grounds, as claimed by the American Union Against Militarism.

In this connection, the tenth amendment is also pertinent. It provides that the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. This amendment seems to make it clear that when the body of the constitution specifically enumerates three ways in which the militia may be used—to execute the laws, to suppress insurrections, and to repeal invasions—the militia cannot legally be used for any other purpose. It is a very common saying that the government is one of 'enumerated powers.' It can exercise only the powers given, particularly when they are specifically enumerated.

It would seem that any of these grounds would be sufficient to make the law unconstitutional. The cumulative weight of all of them seems to crush it utterly, so far as legal validity is concerned."

From the Same Issue (August 30).

Editorial.

"American Autocracy."

At the same time when the governor of Minnesota was issuing his outrageous order preventing the People's Council from meeting in that state, the Inter-Allied Socialist and Labor conference was meeting in London, England, minus delegates from the United States—and apparently meeting without any effort at illegal suppression on the part of the British government.

The governor said, he was quite sure the meeting would be attended by bloodshed.

Who would shed the blood?

Who would stir up trouble?

Certainly not the members of the People's Council. We do not believe that even the governor would have the hardihood to charge that there was any danger of the members of the Council starting anything of that kind.

Then, it follows that he believed, or at least, pretended to believe, that the war boosters would commit assault and murder.

A fine opinion he has of his own bunch, we must say.

Had he used half as much vigilance to keep his blood-thirsty followers from violating the law as he used in barring the meeting by violating the constitution himself, the meeting could have been held without the slightest danger of trouble.

51 Whether or not his order was made with the connivance of autocrats higher up, we have no means of knowing, but we do know that if those higher up were believers in democracy they would have made a vehement protest against his action.

The people of the United States are not to be put down in this fashion. The powers of autocracy may be supreme for the moment, but, in time, the people are going to put the autocrats out of business and make their own will supreme."

From the Issue of August 31st.

Editorial.

"Something for Nothing."

"* * *.

So far as the conscientious objectors to war in general are concerned, they are faithful folk who try to do their duty. They believe that they serve their country best by taking the position they do. They believe they set the right example to others, and that in the long run their course is the best for the country and the race. Many of them have religious scruples based upon very specific statements in the Bible, such as 'Thou shalt not kill.'

So far as the Socialist conscientious objectors are concerned, as a rule they are not opposed to war. They are opposed to wars that are waged for bad purposes and wars that are waged in the interest of the capitalist class. They are opposed to wars of aggression and wars of conquest. A great many of them would fight in a war for the benefit of the working class, provided it was not a war of aggression. A great many of them would also fight in a genuinely defensive war, even though it might not be distinctly a war for the benefit of the working class. They believe that if they killed men in an aggressive war, it would be murder, and they are, therefore, conscientiously opposed to it."

From the Same Issue.

Editorial.

"Positive and Negative."

"Peace is positive.
War is negative.
Peace is positive because it is constructive.
War is negative because it is destructive.
It has been charged that the Socialists have taken a negative position regarding the war.
This is not true.
It is the jingoes who have taken a negative position. They boost for destruction. The fact that they are engaged in aggressive warfare does not make their position a positive one at all, though it may seem so to the superficial minded.
The peace advocates are the positive forces of the present hour."

52 *From the Same Issue.*

Editorial.

"Remember."

"Remember that the United States Steel Corporation, in addition to its regular profits, made a war profit of $207,945,953 in 1916.
Get those figures fixed in your mind. For they are eloquent. They speak volumes.
It was only one of the many big corporations making war profits.
All the great exploiters are boosting for war.
There's a reason."

From the Same Issue.

Editorial.

"Commanding Respect."

"Mr. S. W. Sutton, East Sound, Wash., sends us the following inquiry:

I believe that, prior to the European war, it was the common practice among the now *pro*-war papers to refer to the revolutionary element of Russia as anarchists or nihilists. Am I right or wrong?

You are right, Mr. Sutton.

But, you see, they were not in power at that time. They were struggling for liberty against the apparently impregnable power of the czar. Those who are now our war fans were co-operating with the czar and his government. They wanted Russian trade and Russian money. They were not interested in liberty for the Russian people.

We doubt if, away down deep, they have changed their opinion in the least. But the situation is different. The czar is now an exile in Siberia, whereto he sent so many others. The revolutionists are in power. Power commands respect. If there is to be further trade, if Russian money is to be guided into *into* the pockets of American capitalists, and if they are to be persuaded to continue at war to help us to achieve commercial conquest, we must play up to them. This involves a total abandonment of the freely displayed contempt of ante-war times when they were not in power, and it involves an assumption of boundless admiration and respect.

Your true capitalist and his kept newspaper are always long on hypocrisy. They will kow-tow to a powerful devil or to a powerful angel with equal urbanity—if there is money in it."

33 *From the Same Issue* (*August* 31).

Editorial.

"Wisconsin Ideas."

"* * *.

Do you often have spells like that, brother? The last sentence of your editorial is true—that we cannot make the world safe for democracy unless we make democracy safe in America. That is exactly what we Socialists contend. The war boosters are totally unwilling to make democracy safe for America.

The methods of the so-called Loyalty League are not to be educational. They are to be miseducational. They propose to use every means, by the use of passion and prejudice, to fool the people. In place of education, they will use vituperation, hatred and the calling of hard names. They will try to arouse all that is ugly and venomous in the people and close their minds to the truth.

There is no danger whatsoever of a revolution in this country unless the war boosters themselves stir it up by their brutal attacks upon the fundamental rights of the people."

Issue of September 13.

Editorial.

"Heard in Wall Street."

"Today our contribution from The Other Side is taken from The Financial World, published in New York, and consists of a reproduction of gossip heard in Wall Street.

You will note that they are discussing peace in the street.

Some time ago we called attention to the fact that the financiers were considering the possibility that their investments in the other belligerent countries may become shaky because of the exhaustion of those countries. The quotation from The Financial World indicates that this discussion is still going on. It seems that no definite decision as to policy has been arrived at.

Meantime, the National City Bank of New York reports that our exports for 1917 to the belligerent countries and to the neutral countries are much greater than in previous years.

This no doubt has a tendency to divide the plutocratic forces on the subject of peace. Yet, the biggest financiers are the money lenders. They rule the roost. And the quoted article states that a falling off of foreign trade is not expected after the war anyhow, on account of the exhaustion of other countries. This being the case, it is altogether possible that those capitalists who are not interested in the manufacture of munitions may one of these days de-

54 *cide that they want peace.*

Notice the last statement in the article. "Before the European nations could get upon their feet in an economic sense, we would be far and away in the lead for the premiership in the world's ocean trade."

Now, the premiership in the world's ocean trade—commercial conquest—is the biggest single factor in the war. Commercial supremacy is what we are fighting for. If the reigning financial kings decide that we have already gained this, and that further fighting would endanger the billions of dollars of loans made to the allies, they will move for peace.

And when they move for peace, peace will come quickly.

At that moment, it will cease to be treason—in the eyes of the kept press—to talk peace. On the contrary, the plute papers will fall over one another to get on the peace band wagon. And they will quickly forget their transparent pretense that we are fighting for democracy."

Twenty-Seven. That the above mentioned articles were not alone considered by respondent but other matter contained in various

issues of said publication but not specifically mentioned above were also taken into consideration in determining the mailable character of the matter being sent through the mails in said publication.

He further says that in his judgment, in their entirety, the issues so presented and considered evince a purpose and intent on the part of the relator to wilfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, to promote the success of its enemies during the present war and wilfully cause and attempt to cause insubordination, disloyalty, mutiny and refusal of duty in the military or naval forces of the United States, and to wilfully obstruct the recruiting or enlistment service of the United States to the injury of the service and of the United States.

That such matter is in violation of Section 3, Title I, and Sections 1 and 2 of Title XII of the Espionage Act, and is non-
55 mailable.

The respondent further says that for these reasons the said publication is not a "newspaper or other periodical publication" within the meaning of the laws of the United States governing mailable matter of the second class, and the respondent so decided after due and thorough consideration of the matters and things stated herein.

Twenty-eight. And this respondent further submits to this Honorable Court whether in view of the character of those statements thus cited the relator shall be awarded the extraordinary relief of the writ of mandamus; and he prays the same benefit of this answer as if he had been heard, in limine against the issue of said rule, and also as if he had demurred to said petition.

Further answering, respondent, as to each of the allegations of the petition not expressly admitted or denied, says he neither admits nor denies the same, but so far as they are material he demands strict proof thereof.

And having fully answered the rule to show cause, this respondent prays that the petition be dismissed, the rule to show cause discharged, and that this respondent may go hence with his reasonable costs and charges.

(Signed) A. S. BURLESON,
Postmaster General of the United States.

(Signed) JOHN E. LASKEY,
A.,
United States Attorney, D. C.
(Signed) MORGAN H. BEACH,
Of Counsel.

DISTRICT OF COLUMBIA, *To wit:*

I, A. S. Burleson, do solemnly swear that I am the Postmas-
56 ter General of the United States; that I have read the foregoing answer by me subscribed and know the contents thereof;

that the statements therein made as of personal knowledge are true, and those made upon information and belief I believe to be true.

(Signed) A. S. BURLESON.

Subscribed and sworn to before me, a Notary Public, in and for the District of Columbia, this 16th day of November, 1917.

(Signed) CHARLES E. DUNBAR,
[NOTARIAL SEAL.] *Notary Public, D. C.*

My Commission expires May 18, 1921.

Pleas.

Filed November 19, 1917.

* * * * * * *

Now comes the relator in the above entitled cause, by Charles Poe, Henry F. Cochems and Hubert O. Wolfe, its attorneys and for a first plea to the answer, to the petition heretofore filed herein, says that it never at any time willfully made or conveyed false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and never willfully caused or attempted to cause insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces of the United States or willfully obstructed the recruiting or enlistment service of the United States to the injury of the service of the United States; and

2. For a second plea to said answer said relator by its said attorneys says that its said newspaper never contained any matter
57 advocating or urging treason, insurrection, or forcible resistance to any law of the United States; and

3. For a third plea this relator by its said attorneys says that it never used or attempted to use the mail or postal service of the United States for the transmission of any matter declared by title 12 of the Act of the Congress of the United States known as the Espionage Act to be non-mailable; and

4. For a fourth plea this relator by its said attorneys says that the Congress of the United States never in fact vested in the respondent herein the power or authority to determine it or any other citizen had been guilty of the violation of said Section 3 of said Espionage Act; and

5. For a fifth plea this relator says that there never was any hearing of its case by the Postmaster General before the order excluding it from the use of the mails as second class mail matter was issued by the Post Office Department; and

6. For a sixth plea this relator by its said attorneys says that the said Espionage Act and especially and particularly title 12 thereof, is unconstitutional in that it attempts to abridge the freedom of speech and the liberty of the press; and,

7. For a seventh plea this relator says that the Congress of the United States has no power to delegate to the Postmaster General the

judicial function of determining whether the relator had or had not been guilty of a felony; and

8. For an eighth plea this relator by its said attorneys, says that if any duties were imposed upon the respondent herein by said Espionage Act, said duties were purely ministerial and did not in-
58 volve the exercise of such a discretion as to deprive this Court of jurisdiction to review them.

CHARLES POE,
HENRY F. COCHEMS,
HUBERT O. WOLFE,
Attorneys for Relator.

Demurrer to Relator's Pleas.

Filed November 23, 1917.

* * * * * * *

The respondent says that the relator's first, second, third, fourth, fifth, sixth, seventh and eighth pleas are bad in substance.

JOHN E. LASKEY,
Attorney of the United States in and for the District of Columbia, Attorney for the Respondent, Albert S. Burleson.

NOTE.—It will be argued, among other things, at the hearing of the above demurrer, that the pleas mentioned therein amount to no more than a demurrer to the return of the respondent.

Supreme Court of the District of Columbia.

WEDNESDAY, November 28th, 1917.

Session resumed pursuant to adjournment, Hon. William Hitz, Justice presiding.

* * * * * * *

Come again the parties hereto by their respective attorneys, whereupon the further hearing of this cause is resumed and after argument, the demurrer of respondent filed herein to the pleas of petitioner filed to respondent's answer, is submitted to the Court. Upon con-
59 sideration of the demurrer of the respondent to the first, second, third, fourth, fifth, sixth, seventh and eighth pleas, heretofore filed to the respondent's answer, and after argument by counsel of the respective parties, it is by the Court, this 28th day of November 1917, adjudged and ordered that the said demurrer be, and the same is hereby sustained; and thereupon the relator did demur, by leave of Court, to said answer, to which said respondent filed joinder. After hearing on said demurrer and the same not being concluded at four o'clock, p. m., it is ordered that the further hearing thereon be resumed Friday next at 10 o'clock, a. m.

Supreme Court of the District of Columbia.

WEDNESDAY, January 16th, 1918.

Session resumed pursuant to adjournment, Hon. William Hitz, Justice presiding.

* * * * * * *

Come again the parties by their attorneys, whereupon, the petitioner having pleaded to the answer of the respondent and upon the sustaining of the demurrer thereto filed by the respondent, the petitioner declined to further plead, and having asked and received leave of Court to demur to said answer of the respondent demurred thereto, and the said demurrer having been fully considered, it is this 16th of Jan'y 1918, Adjudged and Ordered, that the said demurrer be and hereby is overruled, the rule to show cause heretofore issued discharged, and the petition dismissed at the cost of the petitioner.

To the action of the Court, in denying leave to plead over, petitioner's attorney of record Mr. Poe, prays an exception, which
60 is noted. Thereupon, petitioner by his said attorney in open Court, notes an Appeal to the Court of Appeals, and the penalty of a bond for costs is fixed in the sum of One Hundred Dollars, with leave to deposit $50.00 with the Clerk, in lieu thereof.

Memorandum.

January 28, 1918.—Appeal Bond $100 approved and filed.

Assignment of Errors.

Filed February 9, 1918.

* * * * * * *

Now comes the relator by his said attorneys and files the following assignment of errors:

First. The Court erred in sustaining the demurrer interposed by the respondent to the pleas of the relator to the answer;

Second. The Court erred in overruling the demurrer to the answer of the respondent;

Third. The Court erred in refusing to the relator the right to plead over when the court overruled the demurrer of said respondent;

Fourth. The Court erred in discharging the rule to show cause;

Fifth. The Court erred in dismissing the petition with costs;

Sixth. Because said Court thereby sustains an unconstitutional violation of the 1st and 5th amendments to the Constitution of the United States;

Seventh. Because the Court sustains a law conferring power upon Congress to deny to the judiciary its constitutional obligations and functions;

61 Eighth. Because the Postmaster General is sustained by the Court in the exercise of a jurisdiction neither actually conferred, nor impliedly vested.

HENRY F. COCHEMS,
HUBERT O. WOLFE,
CHARLES POE,
Attorneys for Relator.

Service of copy admitted this 9th day of Feb. 1918.

JOHN E. LASKEY,
U. S. Att'y, D. C.

Designation of Record.

Filed February 9, 1918.

* * * * * * *

The Clerk of said Court will prepare the record on appeal herein and include therein,

1. The petition;
2. Rule to show cause;
3. Answer;
4. Pleas to answer;
5. Demurrer to pleas;
6. Order sustaining demurrer of respondent;
7. Minute order as to demurrer of relator and joinder of issue thereon;
8. Order of January 16, 1918 overruling demurrer, discharging rule and dismissing petition and prayers for and allowance of appeal;
9. Mem. approved bond for costs filed;
10. Assignment of errors;
11. This order.

HENRY F. COCHEMS,
HUBERT O. WOLFE,
CHARLES POE,
Attorneys for Relator.

Service of copy admitted: Feb. 9, 1918.

JOHN E. LASKEY,
U. S. Att'y, D. C.

62 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 61, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made

part of this transcript, in cause No. 60784 at Law, wherein The United States of America ex rel. Milwaukee Social Democratic Publishing Company is Plaintiff and Albert S. Burleson, Postmaster-General of the United States, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of the Supreme Court of the District of Columbia, at the City of Washington, in said District, this 4th day of March, 1918.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 3164. The United States of America ex rel. Milwaukee Social Democratic Publishing Co., appellant, vs. Albert S. Burleson, Postmaster General of the United States. Court of Appeals, District of Columbia. Filed Mar. 14, 1918. Henry W. Hodges, clerk.

Monday, March 3rd, A. D. 1919.

No. 3164.

THE UNITED STATES OF AMERICA ex Rel. MILWAUKEE SOCIAL DEMOCRATIC PUBLISHING COMPANY, Appellant,

vs.

ALBERT S. BURLESON, Postmaster General of the United States.

The above entitled cause was submitted to the consideration of the Court on the printed record and briefs filed herein by Messrs. Chas. Poe and H. F. Cochems, attorneys for the appellant, and by Mr. J. E. Laskey, attorney for the appellee.

In the Court of Appeals of the District of Columbia.

No. 3164.

UNITED STATES OF AMERICA ex Rel. MILWAUKEE SOCIAL DEMOCRAT PUBLISHING COMPANY, Appellant,

v.

ALBERT S. BURLESON, Postmaster General of the United States, Appellee.

Mr. Justice ROBB delivered the opinion of the Court:

Appellant, plaintiff below, petitioned for a writ of mandamus to require the Postmaster General, appellee here, to reinstate its newspaper, the Milwaukee Leader, to the privilege of transportation in the mails as second class matter. An answer was filed and appellant then interposed eight pleas. Appellee demurred, the demurrer was sustained, plaintiff declined further to plead but sought and received leave of court to demur to the answer. After hearing the demurrer was overruled, the rule to show cause discharged, and the petition dismissed.

The Milwaukee Leader is a daily newspaper published at Milwaukee, Wisconsin. (Its editor was recently convicted and sentenced for violation of the Espionage Law). In September of 1917 the paper was notified by the Post Office Department that, in accordance with the Act of March 3, 1901 (31 Stat., 1107), it would be accorded a hearing by the department as to whether its second class mail privilege should be revoked, the contention of the department being that the publication was in conflict with the provisions of the Espionage Act of June 15, 1917 (40 Stat., 217). Appellant sent its editor to Washington and a hearing was had before the Third Assistant Postmaster General. That official, before whom such hearings are held, reached a conclusion adverse to appellant. Upon review by the Postmaster General the decision was affirmed. The

answer alleges that by the representations and complaints of loyal citizens and from personal reading and consideration of the issues of the publication in question, from the date of the declaration of war down to the time of the hearing, "it seemed to this respondent, in the exercise of his judgment and discretion and in obedience to the duty on him reposed as well *as* by the general statutes as by the special provisions of the Espionage Law, that the provisions of the latter act were systematically and continually violated by the relator's publication." Included in the answer are many excerpts from appellant's publication between June 16, 1917, and September 27 of that year. The appellee, in his answer, says that in his judgment these and other articles in appellant's publication evince a purpose and intent on its part "to wilfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, to promote the success of its enemies during the present war and wilfully cause and attempt to cause insubordination, disloyalty, mutiny and refusal of duty in the military or naval forces of the United States, and to wilfully obstruct the recruiting or enlistment service of the United States to the injury of the service and of the United States."

The constitutionality of the Espionage Act has been sustained by the court of last resort. Schenck v. United States, decided in the Supreme Court of the United States March 3, 1919; Frohwerk v. United States, and Debs v. United States, decided by the Supreme Court March 10, 1919. The hearing accorded appellant amounted to due process. Palmer v. McMahon, 133 U. S., 660; Pittsburgh C. C. & St. L. R. Co. v. Backus, 154 U. S., 421; Londoner v. Denver, 210 U. S., 373; Smith v. Hitchcock, 226 U. S., 53.

Under the provisions of the Espionage Act (Title XII, Sections 1 and 2), every newspaper or other publication in violation of any of the provisions of the act or containing any matter advocating or urging treason, insurrection or forcible resistance to any law of the United States, is declared non-mailable. We shall not review the articles from appellant's publication set forth in the answer, for when they are taken as a whole and considered in connection with the circumstances under which they were printed, we think the conclusion reached by the Postmaster General as to their purpose and effect was warranted. No one can read them without becoming convinced that they were printed in a spirit of hostility to our own Government and in a spirit of sympathy for the Central Powers; that, through them, appellant sought to hinder and embarrass the Government in the prosecution of the war.

There would be no question, in our view, as to the authority of the Postmaster General to refuse the privilege of the mail to many, if not all, of the issues of appellant's publication between the dates mentioned, because they fall within the inhibition of the statute. A more difficult question is presented, however, when we come to consider the right of the Postmaster General to make a blanket order refusing the second class mail privilege to that publication in the future, which in practical effect is a refusal of mail privileges. The statute contains no express grant of such authority. This is signifi-

cant, in view of the fact that Congress deemed it necessary to grant such authority in respect to "any fraudulent lottery, gift enterprise, or scheme for the distribution of money," etc. (Section 3929, R. S.) But if the authority of the Postmaster General in the premises be doubtful, it by no means follows that appellant is entitled to invoke this extraordinary remedy. For three months, at least, appellant's publication had been injecting subtle poison into the public mind, "with intent," as found by the Postmaster General, "to interfere with the operation or success of the military or naval forces of the United States." Mandamus, a remedial process, is awarded not as matter of right but in the exercise of sound judicial discretion and upon equitable principles. Duncan Town Site v. Lane, 245 U. S., 308, and Arant v. Lane, decided by the Supreme Court on March 31, 1919. The settled policy of the appellant having been such as to brand it as a hostile or enemy publication, we are not disposed, in the circumstances of the case, to extend to it the benefits of this equitable remedy. Should it present for transportation in the mails "mailable matter of the second class" (Section 3877, R. S.), and the department should refuse to receive it, a different case would be presented. There is no showing here of such offer and refusal.

The judgment is affirmed, with costs. Affirmed.

Monday, May 5th, A. D. 1919.

No. 3164. April Term, 1919.

THE UNITED STATES OF AMERICA ex Rel. MILWAUKEE SOCIAL DEMOCRATIC PUBLISHING COMPANY, Appellant,

vs.

ALBERT S. BURLESON, Postmaster General of the United States.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Mr. JUSTICE ROBB.
May 5, 1919.

In the Court of Appeals of the District of Columbia.

No. 3164.

UNITED STATES OF AMERICA ex Rel. MILWAUKEE SOCIAL DEMOCRAT PUBLISHING COMPANY

vs.

ALBERT S. BURLESON, Postmaster General of the United States.

Motion for Writ of Error.

Now comes the appellant in the above entitled cause, and prays the Court for a writ of error to remove the same to the Supreme Court of the United States and to fix the amount of bond for costs.

HENRY F. COCHEMS,
CHARLES POE,
Attorneys.

(Endorsed:) No. 3164. United States of America ex Rel. Milwaukee Social Democrat Publishing Company vs. Albert S. Burleson, Postmaster General of the United States. Motion for Writ of Error. Court of Appeals, District of Columbia. Filed July 10, 1919. Henry W. Hodges, Clerk.

Monday, July 14, A. D. 1919.

No. 3164.

THE UNITED STATES OF AMERICA ex Rel. MILWAUKEE SOCIAL DEMOCRAT PUBLISHING COMPANY, Appellant,

vs.

ALBERT S. BURLESON, Postmaster General of the United States.

On consideration of the appellant's motion for a writ of error to remove the above entitled cause to the Supreme Court of the United States and fix the amount of bond for costs, it is by the Court this day ordered that said writ issue as prayed, and the amount of the bond is fixed at the sum of three hundred dollars.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between The United States of America ex Rel. Milwaukee Social Democratic Publishing Company, Appellant, and Albert S. Burleson, Postmaster General of the United States, a mani-

fest error hath happened, to the great damage of the said appellant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 14th day of July, in the year of our Lord one thousand nine hundred and nineteen.

[Seal Court of Appeals, District of Columbia, 1893.]

HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia.

Allowed by
CONSTANTINE J. SMYTH,
Chief Justice.

(*Bond on Writ of Error.*)

Know all men by these presents, that we, Milwaukee Social Democratic Publishing Company, as principal, and Fidelity and Deposit Company of Maryland, as suret-, are held and firmly bound unto Albert S. Burleson, Postmaster General of the United States, in the full and just sum of Three Hundred Dollars ($300.00) to be paid to the said Albert S. Burleson, Postmaster General of the United States, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to *to* be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this seventeenth day of July, in the year of our Lord one thousand nine hundred and nineteen.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said Court, between Milwaukee Social Democratic Publishing Company, appellant, and Albert S. Burleson, Postmaster General of the United States, a judgment was rendered against the said Milwaukee Social Democratic Publishing Company, and the said Milwaukee Social Democratic Publishing Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Albert S. Burleson, Postmaster General of the United States, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, that if the said Milwaukee Social Democratic Publishing Company shall prosecute said writ of error to effect, and answer all costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Corporate Seal of the Milwaukee Social Democratic Publishing Company.]

MILWAUKEE SOCIAL DEMOCRATIC
PUBLISHING COMPANY,
By E. H. THOMAS, [SEAL.]
President.

[Seal of the Fidelity and Deposit Company of Maryland.]

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,
By WALDEMAR C. WEHL, [SEAL.]
Attorney-in-Fact.

Sealed and delivered in the presence of
F. W. REHFELD.
LOUIS MAIER.

Approved by
CONSTANTINE J. SMYTH,
Chief Justice Court of Appeals
of the District of Columbia.

[Endorsed:] 3164. The United States of America ex Rel. Milwaukee Social Democratic Publishing Company, Appellant, vs. Albert S. Burleson, Postmaster General of the United States. Bond on Writ of Error. Court of Appeals, District of Columbia. Filed July 28, 1919. Henry W. Hodges, Clerk.

In the Court of Appeals of the District of Columbia.

No. 3164.

THE UNITED STATES OF AMERICA ex Rel. MILWAUKEE SOCIAL DEMOCRATIC PUBLISHING COMPANY, Appellant,

vs.

ALBERT S. BURLESON, Postmaster General of the United States, Appellee.

Assignment of Errors.

Now comes the appellant by his attorneys and files the following assignment of errors:

First. The Court erred in affirming the action of the Supreme Court of the District of Columbia in sustaining the demurrer interposed by the respondent to the pleas of the relator to the answer;

Second. The Court erred in affirming the action of the Supreme Court of the District of Columbia in overruling the demurrer to the answer of the respondent;

Third. The Court erred in affirming the action of the Supreme Court of the District of Columbia in refusing to the relator the right to plead over when the court overruled the demurrer of said petitioner;

Fourth. The Court erred in affirming the action of the Supreme Court of the District of Columbia in discharging the rule to show cause;

Fifth. The Court erred in affirming the action of the Supreme Court of the District of Columbia in dismissing the petition with costs;

Sixth. Because said Court thereby sustains an unconstitutional violation of the 1st and 5th amendments to the Constitution of the United States;

Seventh. Because the Court sustains a law conferring power upon Congress to deny to the judiciary its constitutional obligations and functions;

Eighth. Because the Postmaster General is sustained by the Court in the exercise of a jurisdiction neither actually conferred, nor impliedly vested.

CHARLES POE,
HENRY F. COCHEMS,
Attorneys for Appellants.

[Endorsed:] No. 3164. The United States of America ex Rel. Milwaukee Social Democratic Publishing Company, Appellant, vs. Albert S. Burleson, Postmaster General of the United States. Assignment of Errors. Court of Appeals, District of Columbia. Filed July 28, 1919. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To Albert S. Burleson, Postmaster General of the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein The United States of America ex rel. Milwaukee Social Democratic Publishing Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Constantine J. Smyth, Chief Justice of the Court of Appeals of the District of Columbia, this 28th day of July, in the year of our Lord one thousand nine hundred and nineteen.

CONSTANTINE J. SMYTH,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this 28th day of July A. D. 1919.

JOHN E. LASKEY,
U. S. Atty., D. C.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jul-28, 1919. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and type-written pages numbered from 1 to 60 inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals, in the case of The United States of America ex rel. Milwaukee Social Democratic Publishing Company, Appellant, vs. Albert S. Burleson, Postmaster General of the United States, No. 3164, April Term, 1919, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 29th day of July, A. D. 1919.

[Seal Court of Appeals, District of Columbia, 1893.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 27237. District of Columbia Court of Appeals. Term No. 482. The United States of America ex rel. Milwaukee Social Democratic Publishing Company, plff. in error, vs. Albert S. Burleson, Postmaster General of the United States. Filed August 4, 1919. File No. 27237.